



THE CITY OF SAN DIEGO **MANAGER'S REPORT**

DATE ISSUED: May 11, 2005 REPORT NO. 05-082

ATTENTION: Honorable Mayor and City Council
Docket of May 16, 2005

SUBJECT: NextG Networks, Inc. Amended Right-of-Way Use Agreement

REFERENCE: Manager's Report No. 04-089, dated May 5, 2004
Manager's Report No. 02-189, date August 28, 2002
Manager's Report No. 01-022, dated February 7, 2001

SUMMARY

Issue - Should the City Council approve an amendment to the Right-of-Way Use Agreement currently in place with NextG Networks of California, Inc. (See accompanying First Amendment to Right-of-Way Use Agreement with NextG Networks of California, Inc.).

Manager's Recommendation - Approve the amended Right-of-Way Use Agreement.

Fiscal Impact - None with this action, however, revenues from the Agreement are estimated to be \$100,000 annually following initial service activation. Additional compensation will flow to the City in the form of no cost fiber and wireless broadband services.

BACKGROUND

On May 10, 2004, the City Council approved a Right-of-Way Use Agreement with NextG Networks of California, Inc. (NextG) for the non-exclusive use of the City's right-of-way and the ability to place equipment on approved City street lights. The agreement was approved for ten years with the ability for a five-year extension option. NextG is a facilities-based voice/data telecommunication carrier that provides services to commercial wireless communication carriers through microcell and fiber optic technology. NextG contracts with traditional wireless carriers and provides services that are designed to amplify and extend the carrier's radio-frequency signal in difficult coverage areas. NextG's agreement with the City allows them to attach low-power

radio frequency antennas and equipment boxes to existing street light poles. Restrictions in the Agreement prohibit the utilization of non-standard or decorative street light poles.

The NextG Right-of-Way Use Agreement requires compliance with the Communication Antenna regulations and City Council Policy 600-43, Telecommunication Antenna Policy. The Agreement also mandates faithful construction and performance bonds to protect the City against any loss attributable to NextG's performance under the Agreement. NextG utilizes microcell technologies advancing the City's preference for utilizing the public right-of-way. NextG's paradigm combines multi-provider usage at each site, thereby promoting the City's policy to facilitate service provider collocation and non-replication of infrastructure. Antenna power consumption will be paid directly by NextG to the power company.

DISCUSSION

The original Right-of-Way Use Agreement identified several different types of antenna schemes under consideration by NextG. The initial plans to utilize these antenna configurations have evolved with the development and refinement of their technology leading their engineers to design a new antenna that combines form and function. The appearance of the antenna resembles a pencil eraser at the top of the pole. The dimensions of the antenna, with random covering, are 24-inches in length, 14-inches in width at the top and 10.5-inches at the bottom (See Exhibit 2 of the Proposed Amendment to the Right-of-Way Use Agreement with NextG).

NextG proposes to modify the Right-of-Way Use Agreement to categorize this antenna design as complying with exemption language contained in Section 141.0405, Communication Antennas, for single dish antennas smaller than 24-inches in diameter and to remote panel antennas less than 24-inches in length and width. Staff has reviewed the concept plans and supports the amended language in the agreement referencing that these antennas would be exempt from the Communication Antenna regulations.

Since the approval of the Right-of-Way Use Agreement in May, the City has revised the internal policy regarding use of city assets and now treats all vertical elements in the public right-of-way equally. NextG's Agreement specifically pertained to street lights and now that the internal policy has been revised, the Agreement has been amended to identify all vertical elements in the public right-of-way as potential candidates for antenna attachments.

CONCLUSION

The proposed revisions to the agreement address the changes that have taken place since the original document was adopted in May 2004. The revisions include categorizing NextG's newly developed, small, unobtrusive antenna as exempt per language contained in Section 141.0405, Communication Antennas, and replacing any references in the document to city street lights with vertical elements.

ALTERNATIVE

Do not approve the amended Use Agreement with NextG Networks of California, Inc.

Respectfully submitted,

Rey Arellano
Deputy City Manager & CIO

ARELLANO/MSJ

Reference:

Proposed First Amendment to Right-of-Way Use Agreement with NextG Networks of California, Inc.

Rev 9-1-04 dcj